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VIA ECF

Honorable Mary Kay Vyskocil, U.S.D.J.
United States District Court, Southern District of New York
Clarkson S. Fisher Building & U.S. Courthouse
500 Pearl Street
New York, NY 10007-1312

Re: *Emily Penzo v. Consolidated Edison Company of New York, Inc.*
Case Number 1:19-cv-07478

Dear Judge Vyskocil:

This firm represents Defendant Consolidated Edison Company of New York, Inc. ("Con Edison") in the above-referenced action. In accordance with your Honor's Individual Rules of Practice and together with Plaintiff Emily Penzo ("Plaintiff"), the parties respectfully request an extension of the Joint Pretrial Order ("JPTO") deadline and an adjournment of the current trial date of December 13, 2023 due to the horrific and unprecedented terror attacks in Israel, availability issues, and the anticipated length of parties' presentation of evidence.

On May 9, 2023, this Court issued a pre-trial order, which among other things, set the JPTO deadline for August 28, 2023 and a trial date of December 13, 2023. (ECF No. 103.) On July 10, 2023, after the parties' request for an extension of the motion *in limine* deadline, the Court issued a second pre-trial order, which among other things, set the JPTO deadline for October 27, 2023 and reiterated the December 13, 2023 trial date. (ECF No. 106.) Motions *in limine* were fully briefed as of September 27, 2023. (ECF No. 133.)

First, an extension of the parties' JPTO deadline is necessary because the parties' meet and confer efforts have been frustrated by the terror attacks in Israel as well as Con Edison's counsel's previously scheduled AAA arbitration hearing. Plaintiff's counsel was out of the country in Israel from September 26 through October 11, 2023 due to the Jewish religious holidays. On October 7, 2023, Israel suffered a horrific terrorist attack on unprecedented scale, which impacted Plaintiff's counsel and her family, including her return to the United States. As a result, she was out of office through October 20, 2023. Separately, Con Edison's counsel was participating in a previously scheduled five-day AAA arbitration hearing from October 16-20, 2023, and he returned to the office on October 23, 2023. As a result, the parties were unable to meet and confer and otherwise complete document and information exchanges as required for the JPTO. As a result, the parties request an extension of the JPTO deadline from October 27, 2023 to November 29, 2023.



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Second, the parties have met and conferred regarding the anticipated presentation of evidence and the current estimated length of trial, which is three days. (ECF No. 103.) Based on the parties' discussions, the parties anticipate trial will last approximately five to seven days. Namely, the parties anticipate calling approximately ten witnesses at trial, which would include current and former employees for Con Edison. As such, it appears unlikely the parties will complete jury selection and both parties' cases in chief within the currently scheduled three days. Additionally, several witnesses have pre-scheduled PTO or vacations through December 2023, which limits their availability for a three-day trial in December 2023.

Given the parties' anticipated presentation of evidence as well as the availability of potential witnesses, the parties respectfully request that the trial date be adjourned to a date convenient for the Court in the first quarter of 2024. The parties have confirmed availability through the first quarter of 2024 and propose the following alternative trial dates: January 8-17, 2024 and February 19, 2024 through March 1, 2024.

The parties are aware of this Court's order stating that "[t]here will be no further extensions." (ECF No. 106.) The parties, however, respectfully request this extension and adjournment due to the horrific terror attacks in Israel, availability issues, and the anticipated length of parties' presentation of evidence. This request is made in good faith, without intent to cause undue delay. Both parties consent to this request and do so jointly. This is the parties' first request for an extension of the JPTO deadline and first request for an adjournment of the current trial date.

We sincerely thank your Honor for your kind attention to this matter.

Respectfully submitted,

SEYFARTH SHAW LLP

/s/ Ephraim J. Pierre

Ephraim J. Pierre

cc: Counsel of Record (via ECF)

The parties' request for an extension of the JPTO deadline and an adjournment of the trial date is DENIED. This matter is one of the oldest cases on the Court's docket. The parties have been aware of the trial date since May 9, 2023. [ECF No. 103]. The parties have been aware of the JPTO deadline since July 10, 2023, that deadline having already been extended from August 28, 2023 at the parties' request. [ECF No. 106]. At that time, the Court cautioned that no further extensions would be granted. All deadlines remain in place. The parties are to proceed to trial as scheduled. As previously ordered [ECF No. 103], the Court will permit no longer than three days for trial. Failure to comply with deadlines or other orders of the Court may result in sanctions, including preclusion or dismissal of claims or defenses. SO ORDERED.

Date: 10/26/2023
New York, New York

Mary Kay Vyskocil
United States District Judge